

RULE 80L. JURY TRIAL DE NOVO IN SMALL CLAIMS APPEALS TO THE SUPERIOR COURT

(a) Applicability. This rule governs proceedings in jury trials de novo on appeal to the Superior Court from judgments of the District Court in small claims actions. The other provisions of the Rules of Civil Procedure do not apply to such proceedings except as provided in this rule.

(b) Scope; Service and Filing of Papers; Time; Motions. Rules 1, 2, 5, 6, 7(b), 11, and 15(b) of these rules apply to jury trials de novo in small claims appeals, so far as applicable. All notices given to the defendant shall be sent by ordinary mail addressed to the post office address of the defendant set forth on the notice of appeal.

(c) Pretrial and Trial Proceedings.

(1) *Determination on Affidavits.* When the record in a small claims appeal in which jury trial de novo has been demanded is received in the Superior Court, the clerk shall immediately notify the parties. The plaintiff may, within 10 days after the mailing of such notification, file a counteraffidavit or affidavits meeting the requirements of Rule 56(e), together with a brief statement of the grounds of any cross appeal for which a notice was filed under Rule 11(a) of the Maine Rules of Small Claims Procedure. The court shall thereupon review the affidavits of both parties, together with the entire record on appeal, and shall determine whether the defendant's affidavits are adequate and, if so, whether there is a genuine issue of material fact as to which there is a right to trial by jury.

(2) *Genuine Issue of Fact: Further Pretrial Proceedings; Assignment for Trial.* If the court finds that defendant has shown in light of the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall either direct the clerk immediately to place the action upon a jury trial list maintained in accordance with Rule 40(a) or shall order the parties to file pretrial memoranda containing specified information or to appear for a pretrial conference or to file memoranda and appear for a conference. After review of the pretrial memoranda or at the conclusion of the conference, the court shall direct the clerk to place the action upon a jury trial list. Scheduling of actions for trial shall be at the direction of the court, as provided in Rule 40(a).

If either party intends to offer witnesses or exhibits not offered at the trial in the District Court, that party shall file a list of the names and addresses of

such witnesses and a brief description of such exhibits within 10 days after notification that the action has been placed upon a jury trial list or, if pretrial memoranda or a pretrial conference have been ordered, at the time set by the court for such memoranda or conference. The opposing party may file a similar list and description in reply within 10 days, or as ordered by the court. No witness or exhibit may be offered in the Superior Court unless it was offered in the District Court or appears on a list filed in accordance with this paragraph.

(3) *No Genuine Issue of Fact: Disposition.* If the court finds that defendant has not shown in light of all the affidavits and the whole record that there is a genuine issue of material fact as to which there is a right to trial by jury, it shall enter judgment dismissing the appeal, and further proceedings shall be had as provided in subdivision (d) of this rule; provided that, if either party has raised an independent question of law in the notice of appeal, the court shall review the record pertaining to it. If the court finds that a properly raised question of law is material to a legal claim or defense, the appeal shall proceed as provided for appeals on questions of law in Rule 11 of the Maine Rules of Small Claims Procedure.

(4) *Jury Trial.* An action placed upon a jury trial list shall be tried by jury. If the defendant withdraws the demand for jury trial in a writing filed with the clerk before the date on which the jury is to be empanelled, or if the court upon its own initiative at any time finds that no right to trial by jury of any issue exists under the Constitution or statutes of the State of Maine, the appeal shall be dismissed or proceed on a material question of law, as provided in paragraph (3) of this subdivision.

(5) *Continuances; Dismissal.* Rules 40(b) and (c) and 41 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

(6) *Evidence.* Rules 43, 44, 44A, 45, and 46 of these Rules, and the Maine Rules of Evidence, apply to jury trials de novo in small claims appeals, so far as applicable.

(7) *Jurors; Majority Verdict; Submission to the Jury.* Rules 47, 48, 50, and 51 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

(d) Judgment.

(1) *Rules Applicable.* Rules 54, 54A, 55, 58, 59, 60, 61, 62, and 63 of these rules apply to jury trials de novo in small claims appeals so far as applicable.

(2) *Amount of Judgment.* In no event shall the judgment entered exceed the statutory amount exclusive of interest and costs.

(3) *Interest.* A money judgment entered on a verdict shall bear interest at the post-judgment rate provided by law only from the date of the entry of judgment in the Superior Court.

(4) *Mandate.* Upon entry of judgment in the Superior Court, the court shall thereupon remand the case to the District Court from which it originated for entry of a like judgment, and for any further proceedings.

(e) *Appeal to the Law Court.* A party entitled to appeal to the Law Court from a decision of the Superior Court may do so as in other civil actions.

(f) *Miscellaneous Provisions.* Rules 77, 78, 79, 81, 82, 83, 84, 85, 86, 89, 90, and 91 of these rules apply to jury trials de novo in small claims appeals, so far as applicable.

Advisory Committee's Notes
January 1, 2001

Rule 80L(e) is amended to remove the reference to specific appeal rules numbers for appeals from Superior Court to the Law Court and substitutes a general reference as appears in some other rules. *See e.g.*, M.R. Civ. P. 80K(j).

Advisory Committee's Notes
May 1, 1999

Rule 80L(d)(2) and Small Claims Rule 3(d) are amended to remove outdated references to statutory jurisdictional limits. Instead of a specific number, the rules are amended to refer to "the statutory amount" which means the jurisdictional limit set in 14 M.R.S.A. § 7482. That limit is now \$4,500.00.

Advisory Committee's Notes
1990

Rule 80L(c)(7) is amended to eliminate the specific limitation of closing argument to 15 minutes unless otherwise ordered. This change is consistent with the recent amendment of Rule 51 allowing the court to set the time for argument in each case. When Rule 80L(c)(7) was originally promulgated, Rule 51 provided one hour for final argument in civil actions.

Advisory Committee's Notes 1986

Rule 80L is added simultaneously with the amendment of M.R.S.C.P. 11 to provide a procedure in the Superior Court for appeals in small claims actions by jury trial de novo as constitutionally required by the recent decision of the Law Court in *Ela v. Pelletier*, 495 A.2d 1225 (Me. 1985).

Rule 80L(a) provides that the Maine Rules of Civil Procedure apply to jury trials de novo in small claims appeals only when specifically recited in this rule. The provision differs from that of other special rule--for example, Rules 80(a), 80A(a), 80B(a)--which make the Rules of Civil Procedure generally applicable to the special proceedings which they govern unless expressly made inapplicable. This difference is necessary because of the need to make these appeals as simple as possible, consistent with the provision of the Small Claims Act, 14 M.R.S.A. § 7481, that the purpose of the Act is to provide "a simple, speedy, and informal court procedure for the resolution of small claims."

Rule 80L(b) provides that the provisions of Rules 5, 6, 7(b), 11 and 15(b) concerning service and filing of papers, time periods, motions, and amendments to conform to the evidence apply to jury trials de novo "so far as applicable." These are necessary housekeeping rules. The rule specifies notice by ordinary mail to the defendant in order to make clear that the requirement of 14 M.R.S.A. § 7484(l) for registered or certified mail service by the clerk does not apply. Defendant is now the moving party. The provisions of Rules 3-4B covering commencement of action and service of process are not made applicable, because the appeal is commenced in the Superior Court by filing the notice of appeal with notification to the appellee and original service of process occurs at the District Court level at the outset of the small claims action.

The rule also does not incorporate the remaining provisions of Rule 7 and Rules 8-37, covering pleading, parties, and discovery. These rules either have their equivalents at the initial procedural stages in the District Court or introduce procedural complexities that are inappropriate to the simplicity requisite in a small

claims action. The principal effect of these omissions is that there is no pleading of any kind in the Superior Court, and there are no counterclaims, complex party practice, or discovery devices available.

Rule 80L(c)(1) provides a special pretrial screening procedure intended to weed out cases in which the jury demand is frivolously or unwarrantedly made. The procedure is analogous to a summary judgment motion under Rule 56, but it operates automatically and the burden is on defendant to show that a genuine issue of material fact exists, and that there is a right to jury trial on that issue. Under M.R.S.C.P. 11(d)(2), defendant must file with his jury demand an affidavit setting forth specific facts showing that such an issue exists. That affidavit becomes part of the record on appeal under M.R.S.C.P. 11(d)(4). The plaintiff has 10 days after mailing of notification of receipt of the record in the Superior Court to file counteraffidavits, as well as a statement of the grounds of any duly filed cross appeal. The timetable is designed to let plaintiff base his response on the whole record. After the period for filing counteraffidavits has passed, the court automatically reviews the affidavits and record without hearing to determine whether a triable issue exists.

Under Rule 80(c)(2), if the court finds that there is an issue for trial, the court either may direct the clerk to place the action directly on the general jury trial list or a special small claims jury trial list or may order further pretrial proceedings. These proceedings may be either pretrial memoranda on specific information which the judge feels is required in the circumstances, or a pretrial conference, or both. The judge is to shape the procedure to the needs of the situation rather than follow the elaborate requirements of Rule 16. After pre-trial proceedings are concluded, the clerk places the action on the trial list as in a case in which no pretrial proceedings were ordered. Assignment for trial thereafter under Rule 40(a) is at the direction of the court. It may be assumed that, consistent with the statutory purpose of the small claims procedure, the Chief Justice of the Superior Court will, by administrative action, provide for the expeditious trial assignment of small claims appeals. Paragraph (2) further provides that neither party may offer evidence on the trial de novo that was not offered in District Court unless a list of such evidence has been filed by a party 10 days after placement on the jury list, or prior to pretrial proceedings if they are held. The opposing party may file in reply within 10 days or as ordered by the court.

Under Rule 80L(c)(3), if the court finds no triable issue, the appeal will be dismissed and remanded for judgment in the District Court, unless an independent question of law has been presented in the grounds stated by the defendant in the

notice of appeal or filed thereafter by plaintiff. In that event, if the court on preliminary review finds that the issue is a material one, the appeal proceeds under M.R.S.C.P. 11 as an ordinary small claims appeal on a question of law. For example, if in an appeal from a judgment on a consumer note, defendant offers the defenses of an offer to pay \$5.00 per week and the statute of frauds, the court might dismiss the appeal as to the first defense on the facts that find legal issues raised by the second defense that required hearing. This approach reflects the view that the only right provided by *Ela v. Pelletier, supra*, is to a retrial by jury, not to a second court trial.

Rule 80L(c)(4) is a simplified version of Rule 39(a). (Rules 38, 39(b)-(d) are not applicable.) An action placed upon a jury trial list will be tried to a jury unless, thereafter, the defendant withdraws his jury demand or the court, at any time on its own motion, finds that there is no right to jury trial on any issue. If the court finds that there is a jury right on one issue but not on others, all issues will nevertheless go to the jury, because it is simpler to put the entire case to the jury than provide the bifurcated trial that technically would be required in a case containing both jury and non-jury issues. *See* 1 Field, McKusick & Wroth, *Maine Civil Practice*, §38.2 (2d ed. 1970). There is no right to a trial without jury. Under Rule 80L(c)(4), if the action is not to be tried to a jury for any reason, the appeal is either dismissed or carried forward for determination of an independent question of law, as appropriate, under paragraph (3).

Under Rule 80L(c)(5), Rules 40(b) and (c) apply to continuances. Rule 41 governing voluntary and involuntary dismissal is necessary for appropriate disposition. *See* M.R.S.C.P. 9(b). Rule 42 is made inapplicable to avoid complexity at the Superior Court level. Any appropriate consolidation or separation should have occurred in the District Court under M.R.S.C.P. 6(c).

Rule 80L(c)(6) provides that evidentiary provisions of Rules 43, 44, 44A, 45 and 46 apply to jury trials de novo in small claim appeals, as do the Maine Rules of Evidence. This provision differs from that of M.R.S.C.P. 6(b) under which the only applicable rules of evidence are those governing privileges, and the court has broad discretion to receive relevant, unprivileged evidence and exclude irrelevant evidence. The more formal and stringent provisions of the Civil and Evidence Rules governing order of trial and admission of evidence have been made applicable, because their very purpose is to aid in the fair and efficient conduct of proceedings before a jury.

Under Rule 80L(c)(7) the provisions of Rules 47 and 48 governing jury selection and verdict, as well as those of Rule 50 governing motions for directed verdict and judgment notwithstanding the verdict and Rule 51 governing argument and instruction to the jury, are made applicable. Rule 49, governing special verdicts, and Rule 52, concerning findings of fact, are inapplicable because their complexities are unnecessary. Rule 51(a) is modified to limit closing argument to 15 minutes per side unless the court orders otherwise.

Rule 80L(d)(1) incorporates the provisions of the civil rules covering judgment, costs, relief from judgment, harmless error, stay, and disability of the judge. Note that the Superior Court entry fee required by Rule 54A must be paid in the District Court under M.R.S.C.P. 11(b). The provisions of Rule 56 for summary judgment and Rule 57 for declaratory judgment are omitted as unnecessary. *See* Rule 80L(c)(1).

Rule 80L(d)(2) limits the amount of judgment that may be entered to reflect the jurisdictional limitations of the Small Claims Act, 14 M.R.S.A. §§ 7481, 7482. The limit controls regardless of the size of the jury's verdict. *See* 2 Field, McKusick, and Wroth, *Maine Civil Practice* § 100.2 (2d ed. 1970). This limit is imposed, because to do otherwise would require that the defendant be allowed to amend to add counterclaims.

Rule 80L(d)(3) makes clear that post-judgment interest runs only from the date of the Superior Court judgment and not from the date of the original District Court judgment. This provision reflects the fact that the Superior Court determination, flowing from the trial de novo, is the final judgment for this purpose. Under current law, the post-judgment rate is 15%. 14 M.R.S.A. § 1602-A.

Rule 80L(d)(4) is based on, and identical in effect to the second clause of M.R.S.C.P. 11(f). It is restated here for convenience and completeness.

The provisions of Rules 64-71, governing equitable and other special remedies, deposit in court, offer of judgment, and post-judgment process are omitted as either inappropriately complex or covered in simplified form in the Maine Rules of Small Claims Procedure. *See* M.R.S.C.P. 12.

Rule 80L(e) incorporates Rules 72-76A governing appeals to the Law Court. Such appeals are to be carried out as appeals in other civil actions.

Rule 80L(f) incorporates the housekeeping provisions of Rules 77-79 and 81-91. Rules 80-80I, providing special rules for actions such as divorce, real property actions, review of governmental actions, and separate support and custody, are omitted as obviously inapplicable.